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KEYNOTE ADDRESS

AN EYEWITNESS ACCOUNT OF EXECUTIVE “INABILITY”

*Fred F. Fielding**

I would like to thank you, Dean Feerick, for the invitation to speak here today and also for the impact that you have brought to so many important works related to our public governance and the enhancement of the public trust. We’re all very honored to be in your presence at any time for that.

Also, as all the panelists know, I would like to make humble reference to your persuasive ways of getting people to do what you would like them to do.

As this symposium lineup illustrates, we are very fortunate that some of the most recognized legal scholars have dedicated many hours—actually, many years—of time and effort to research and to think about this important issue of continuity of government, and especially continuity of the presidency. I would be remiss in failing also to personally, as well as publicly, acknowledge and thank the distinguished Senator Birch Bayh, with whom I have had the wonderful experience of working on this subject and others, but also for his authorship and his foresight and stewardship for the Twenty-Fifth Amendment.

I have been blessed by opportunities for public service. I hope that everyone who has the opportunity seizes it. Although it can be frightening sometimes, it can also be very personally rewarding. Particularly, I have been blessed to serve in the Office of the President for three different administrations, as Dean Feerick mentioned, as well as a Commissioner to study the tragic events of September 11.

But until preparing my thoughts for today’s talk, I really didn’t realize and focus on the irony that in each of the three tours of duty at the White House, I have witnessed the invocation, the implementation, and/or the serious contemplation of various aspects of the Twenty-Fifth Amendment. Each of them has had a chapter in the Amendment’s history. I further realized that I was not only involved in the first exercise of Section 2 [of the Amendment]—when Spiro Agnew’s replacement was sent to Congress—but also the first time that the provisions of Section 3 were observed, albeit reluctantly and ambiguously, by President Reagan. I also was involved in

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the only known situation where historians have argued that maybe the Twenty-Fifth Amendment should have been exercised.

So as—I guess I’ll call myself—an eyewitness in each instance, and later in the seemingly routine exercise of Section 3 by President George W. Bush in 2007, I’m especially pleased, after watching the excellent scholarship that was presented this morning, to spend some time with you to provide a view from ground zero on our subject matter.

It goes without saying that the issue of executive continuity has a paramount importance, increasingly so in today’s ages, the nuclear age and also the age of terror. The gravity of the issue, and the virtues and the complexities of the existing structures that we have, has not only been a topic for scholastic endeavors, but, as everyone knows, they have found their way to stage and screen. In the last ten years, I would suspect that the two most popular and watched drama shows are *The West Wing* and *24*. Both dealt with the topic. Indeed, *24* did on several occasions—or several “days,” I guess I should say.

So this morning and this afternoon, and then again tomorrow, we are going to be treated to well-informed discussions regarding the ambiguities of the current constitutional arrangements. However, notably, the Twenty-Fifth Amendment itself was a long overdue attempt to resolve some of the areas in which, it’s fair to say, in retrospect, our Founders seemingly had the capacity to be more precise, but were not so, in the case of Article II, Section 1 [of the Constitution].

My point being that the Constitution, as originally ratified, failed to make it clear how or who would determine whether a President possessed the “inability,” which was referenced, to discharge those powers and duties of the President, and whether, upon relieving the President in the case of death, resignation, or such inability, the Vice President would necessarily serve as the President as opposed to the Acting President.¹ It’s to the great testimony of leaders at both ends of Pennsylvania Avenue, and perhaps to fate, that the Republic functioned for almost two centuries without these and other attendant problems officially resolved.

For those of you who are just joining us and didn’t have the benefit of this morning, during those two centuries, Congress adjusted the laws of succession, eventually settling on the framework adopted in the [Presidential] Succession Act of 1947,² in which the path from the Vice President would run through the leaders of each of the houses of Congress before reentering the President’s Cabinet. There are interesting debates—we heard them this morning and we’ll hear them again, I’m sure—as to the pros and cons for that.

Nonetheless, while that was going on, within the executive branch periods of temporary inability to function were really handled on an ad hoc

1. See 2 RECORDS OF THE FEDERAL CONVENTION OF 1787, at 657–58 (Max Farrand ed., 1911) (reproducing the Constitution as produced by the federal convention, specifically Article II, section 1, clause 6).

2. Pub. L. No. 80-199, 61 Stat. 380 (1947) (codified as amended at 3 U.S.C. § 19 (2006)).

basis by nonbinding memoranda of understanding between the President and the Vice President. Following the Kennedy assassination, however, and tense episodes such as the Cuban Missile Crisis that made a nuclear threat to our citizenry and our government suddenly all too real, leaders such as Senator Bayh rightly understood that the ad hoc solutions were no longer sufficient.

Thus, we are discussing today the result of that concern: the Twenty-Fifth Amendment. While it did not address all plausible, conceivable contingencies, it has proven to be a critical addition to our nation's governing framework.

I mentioned that, ironically, I was witness to the relevancy of the Twenty-Fifth Amendment in all three terms in which I served in the White House. This included the first invocation of Section 2 of the Amendment in 1973 with the resignation of the Vice President and the nomination of Gerald Ford two days later. I was thirty-four years old, and there I was dealing with the Constitution. That would be the first of two applications, as we all know. While I left in February, thereafter President Ford would, in turn, nominate Nelson Rockefeller, upon President Nixon's resignation.

But the use of Sections 1 and 2 in 1973 and 1974 played an important role in our government. These were very unsettled and very unsettling periods of time. Unlike Sections 3 and 4, Section 2 has relatively little discretion and interpretation, apart from the need for the President to choose a candidate who could be confirmed by Congress. But requiring congressional approval for the Vice Presidential replacement added a democratic element and a responsible connection to the voting public at this time, when there was understandable distrust of the executive branch and of government at large.

The first two months of my service as Counsel to the President for Ronald Reagan provided, really, the first serious consideration of the invocation of Section 3. It was on March 30, 1981, just over seventy days into a new administration. President Reagan delivered a mid-afternoon speech to the AFL-CIO Building Trades Council at the Washington Hilton. That was the kind of speech and the type of audience that epitomized the breadth of the Reagan coalitions and the spirit of his presidency, to be sure, but it was also so routine that very few on the White House senior staff even wanted to attend. It was just an early afternoon speech.

Back at the White House, it was a normal day of operations—or at least as normal as things can be in a new administration with an ambitious agenda. We all recall with clarity when we first learned that JFK had been shot. I must tell you, as Counsel to the President, you always imagine that that same thing might or could happen on your watch, but you still don't expect that it will, when it does. As I recall, I was in my office, meeting with the Deputy Attorney General about God-knows-what. About 2:30, I got a call from the Secret Service saying that there had been a shooting at the Hilton and that the motorcade was on its way back to the White House, and immediately thereafter, got a notice that the motorcade had diverted to

G.W. Hospital. So we all kind of knew at that point that something else had happened.

To provide a little context to you—this was 1981, almost thirty years ago—one of the aspects to keep in mind when you revisit that day is that we have come a long way technologically from where we were thirty years ago. Everyone that prepared for this knows that there is a book by Herbert Abrams.³ I will say, at least in this instance, he had it right, when he said that probably the first phone call to the White House was from a pay phone, telling them that there had been a shooting. There were no cell phones, no BlackBerries, no text messaging that we all so rely on now. There were telexes and pagers and “walkie-talkies,” but that’s really not equivalent to what we are talking about here. The first and only twenty-four-hour news channel was CNN, which was our first source of information, when we gathered in the Situation Room later. That was just about as new as the administration itself. This was all a new, different technology.

Upon word of the shooting and that the President had actually been hit, I called the National Security Adviser. He started to assemble people in the Situation Room, which is, of course, the secure facility within the White House complex. That’s a logical place to gather. Remember, given that the source and the scope of the shooting was totally unknown, we didn’t know if this was a conspiracy or if this was part of something else. Recall at the time that the Cold War was still cold, and it was one of the chillier phases of the Cold War during that period of time. There was the growing concern that the Soviets would react aggressively to the Solidarity strike that had just occurred in Poland. So there was a tension in our dealings in international events.

The group that gathered in the Situation Room that day consisted of ten or more individuals, people leaving and coming at various points. It wasn’t a full Cabinet meeting, but rather an ad hoc assembly of people. In addition to myself and the National Security Adviser, Defense Secretary [Caspar] Weinberger was there; Secretary of State Alexander Haig, whom we’ll make reference to a little later, was there; the Attorney General, William French Smith; Donald Regan, who at that time was the Treasury Secretary; Transportation Secretary Drew Lewis was there; and domestic advisers were there. Dan Murphy, who was the Vice President’s Chief of Staff, was there, as well as the White House press people. David Gergen, whom you have seen in more recent iterations, was in and out, because he was dealing with the press corps, along with the Deputy Press Secretary, Larry Speakes. Several other White House people went in and out. Our Press Secretary was among those shot at the Hilton.

Significantly, at that point, the Vice President was not in the city. At that time, the White House staff had what was called the troika. You had the Chief of Staff, who was James A. Baker; you had the Counselor to the

3. HERBERT L. ABRAMS, “THE PRESIDENT HAS BEEN SHOT”: CONFUSION, DISABILITY, AND THE 25TH AMENDMENT IN THE AFTERMATH OF THE ATTEMPTED ASSASSINATION OF RONALD REAGAN (1992).

President, who was a very close confidante of the President's, Edwin Meese, who later became the Attorney General; and a gentleman named Michael Deaver, who was the Deputy Chief of Staff and, really, the President's eyes and ears, from the First Family point of view. They were all at the hospital with the President and the First Lady.

I suspect that there really wasn't any realization, when they were at the hospital, of the severity of the President's injuries. There certainly wasn't any during that day in the Situation Room. As I said, the Vice President was away. He was in the air over Texas when the shooting first occurred. He had initially been informed of the shooting, but not that the President had been hit, because initially we didn't know the President had been hit. Anyway, he had already turned around and was headed back to Washington.

Most of the news that we were getting was not coming from the Secret Service in the Situation Room. It was coming from the television. There was one television overhead, and that's where we were getting most of our news. And in all due respect, it wasn't always accurate. For instance, one network reported that Press Secretary James Brady, who had been shot, had, in fact, died. There was a moment of silence in the Situation Room, and tears were abundant. Jim Brady was a very popular guy. But, in fact, he hadn't died.

The scene in the Situation Room, if I could try to describe it, was obviously apprehensive but it wasn't harried or frantic. Again, go back to context. The people that were in the room were professionals. The Cabinet had only recently been assembled. These were people that had come from different backgrounds. Some people came from the President's California retinue and his governor's team. Others were former Nixon Administration officials. Some were brand new to the whole thing. In all fairness, this was a roomful of strangers who really operated fairly well together under these circumstances.

While no one approached me or the Attorney General with any requests for papers sufficient to exercise Section 3 or 4 of the Twenty-Fifth Amendment during the time I was there, I had prepared such papers and had them with me. I had them with me in draft, for both Section 3 and Section 4 coverage.

Also, to be frank with you—and this may be something Senator Bayh was referring to earlier—when I reviewed the provisions of the Twenty-Fifth Amendment with the people that were in that room, their eyes glazed over. Most of them didn't have a sense of that obligation, though some obviously, did. The Attorney General certainly did after being briefed by his staff. Given the remarks that have now become very famous that were made that day, the line of succession was equally opaque to some people. Of course, that was the famous, or infamous, day for Al Haig. In fairness to Secretary of State Haig, he clearly thought at that time that he was providing reassurance to the American public. The Deputy Press Secretary had just walked into the pressroom. He was inexperienced. Somebody asked him who was in charge, and he said, "I don't know." Haig, watching

that on our television, bolted out, ran up two flights of steps—Haig had had three heart attacks and he smoked about three packs a day—he walked in, breathless, and made his famous statements.

As I say, in fairness, I think he was trying to provide reassurance to the nation. His remark was that he was “in control at the White House, pending the return of the Vice President,” end of quote. However, later there was a confrontation in the Situation Room, and he would later acknowledge—although certainly not at that moment—to me that his legal premise was inaccurate. But what had happened was, when he was asked by the press beyond what he had said, “Who’s making the decisions?” He indicated—and this is a quote—“Constitutionally . . . you have the President, the Vice President, and the Secretary of State, in that order.”⁴

So, first, apart from history as we know it, the Speaker of the House and the President pro tem have always preceded the Secretary of State and any of our Cabinet members in the line of succession. As an administrative matter, the Secretary of State was the senior administration person in the room at that time. But that’s not what he said. Secretary of Defense Weinberger and he had a very famous confrontation in the Situation Room when he came back. It was a sharp exchange. Weinberger’s point was—and it was valid—that Secretary Weinberger, Secretary of Defense, was in charge of the national chain of command. It went from the Commander-in-Chief to him. He had already upped our DEFCONs to the level that he thought was necessary, because we had no idea if this was a conspiracy, the beginning of an international event, or what it was.

That really was controlling the subject at hand, and this had been the subject of a very intense debate a few weeks before within the administration, but predominantly between the Secretary of Defense and the Secretary of State. The Secretary of State did not prevail in that debate. That made the exchange even sharper.

As an aside, I should tell you—what I started to mention before—one of the first things that I did when I became Counsel to President Reagan was to put my staff to work on preparing a book. It was going to be a comprehensive book. It was really kind of an emergency manual, which detailed every possible scenario that we could think of for presidential inability or even vice presidential inability. The book had not been completed on March 30, but the letters for Sections 3 and 4 had been completed, and that’s what I had in my hand.

Later, when it was completed—again, as an aside—whenever I would travel with the President, I always carried the book with me and I always had a copy back in the safe. The book basically, as I said, contemplated every situation you could imagine. This was, in fact, passed on to the next administrations. Unlike most documents, which are never passed on, this one went out of channel and it was passed on. I was delighted, when I went back into the White House this last time, to see that the book not only still

4. ALEXANDER M. HAIG, JR., *CAVEAT: REALISM, REAGAN, AND FOREIGN POLICY* 160 (1984).

exists, but it's very nicely bound, and it's not only in the Counsel's Office, but it's in every emergency facility and permanently in Air Force One and Air Force Two. So at least that problem has been met for the time being. It's certainly consistent with the Twenty-Fifth Amendment as well.

As we all know, the Twenty-Fifth Amendment was not invoked on March 30. I have read that during that tense afternoon the draft Sections 3 and 4 letters were pulled from my hands and sealed in a safe. That's not quite so. Rather, at the request of the Chief of Staff, the papers were stored in a safe unless and until needed. But think how silly that sounds. It wasn't a great secret that the Twenty-Fifth Amendment was in play, if you will. To say that suddenly papers were pulled and stored protectively, as if the Twenty-Fifth Amendment was non-existent, sounds and is silly.

It is true that we were informed that the bullet had been removed from the President's lung after surgery, and an hour later, we were informed that doctors were very confident of a full recovery. That news quelled any further thoughts or discussion about invoking the Twenty-Fifth Amendment until the Vice President returned. He was en route back. Of course, once he got back, he met with us, in an expanded group in the Situation Room. The group of us—the Attorney General, the Chief of Staff, and Secretary Weinberger, and me, but not the Secretary of State, went into the Vice President's office. There we discussed whether Section 4 should be invoked, at that point. The decision was made that it should not be. The next morning the President was alert. He was joking, writing notes to people. He met and conducted some very minor official tasks, with the cameras being there to show that the President was working. The Vice President met with the senior staff and oversaw routine business.

Some have contended that the Twenty-Fifth Amendment should still have been under consideration in the course of the ensuing days. The President recovered gradually and underwent additional procedures. People presumably were talking about Section 4, or a prompting by the President to engage in Section 3. But if the Amendment hadn't been triggered on the day of the shooting, hadn't been triggered that evening, it certainly was not going to be willingly engaged, absent a change in the President's health, by the mere virtue of his understandably reduced schedule. The world had been told he was recovering, and, thankfully, that's what turned out to be the case.

Four years later, there would, of course, be more lead time prior to the President's medical procedures that we referenced earlier this morning, which allowed for an orchestrated consideration of necessary provisions for presidential continuity. We had learned that the President had an intestinal polyp. The President was scheduled to undergo a colon procedure. Accordingly, prior to the July 12 procedure, I met with the President, the Vice President, and the Chief of Staff, and we discussed the implications of the treatment, the Twenty-Fifth Amendment, the national command authority, the President's wishes regarding the temporary passage of power if he were to be incapacitated for any length of time. I'm going to come

back to that, because this will be relevant as we discuss what happened later.

We all knew that there was a possibility that something more significant could happen, but as it looked that day, general anesthesia was not going to be required. The decision was obvious, and the views were unanimous that the Amendment would not be exercised.

But later that afternoon, on that Friday, the Chief of Staff was informed that there were some problems with the President's examination and that something larger was found and a more significant surgical procedure was going to be required. So we discussed what needed to be done—how to contact the Vice President, who at that point would be traveling to Kennebunkport[, Maine]. At that point, no decision and no recommendation was made to the President regarding the Twenty-Fifth Amendment, but we were aware of his general reluctance to exercise the Amendment for anything that he deemed to be a minor period of inconvenience or incapacitation.

So we had further discussions that night with the Vice President on the phone and the Attorney General. We agreed that we would meet at the hospital the next morning. That evening I drafted several options of letters. One was a clearly expressed Twenty-Fifth Amendment invocation. It had already been in my book. It was pure vanilla. It just exercised the Twenty-Fifth Amendment.

Another was a letter that the President would eventually actually sign. This is what we deemed to be the optional letter. It followed the Amendment, for all practical purposes, but did not outright invoke it. The draft letter expressly—and you have probably all read it—disclaimed invocation of the Amendment—he did not want precedent binding on anyone privileged to hold the office in the future. I added that language. I added it because, based on my conversations with him about the Twenty-Fifth Amendment, both that day and before, I knew there was a serious reluctance on his part to establish binding precedent on future Presidents for what he deemed to be minor surgical procedures. He kept talking about, for instance, “What happens if I have a toothache and have to have a tooth pulled out? Are you going to tell me to transfer power? I don’t think that’s what the Twenty-Fifth Amendment was intended to do.”

One can easily think of other reasons why a President would theoretically be reluctant to turn power over to a Vice President. But that certainly wasn’t the motivating factor here. Candidly, I can’t think of any situation in any administration since that day where a President would have had the need for that kind of concern.

But early the next morning, Saturday, I met with the Chief of Staff at Bethesda, where the President was being prepped for surgery. We discussed the drafts. Then we went in and discussed it with the President and Mrs. Reagan in his hospital room. The President, as I expected, clearly liked the optional paper, directing the Vice President not solely based on the Twenty-Fifth Amendment, but consistent with his longstanding arrangement with the Vice President that he would “discharge those

powers and duties in my stead' commencing with the administration of anesthesia."⁵

The Vice President had been informed of the pending assignment and was en route back to Washington. The letter was transmitted to Congress, and the surgical procedure proceeded.

For the benefit of historians, there is no question that the President knew he was temporarily transferring the presidency. Once he signed it, he handed it to me and he jokingly directed that I should tell Vice President Bush that Nancy did not go along with the transfer deal.

The President's letter concluded that, consistent with the provisions of Section 3, he himself would then advise Congress when he was able to resume the duties and discharge his constitutional obligations.

To fill out the story, when surgery was completed, the Chief of Staff, the Press Secretary, and I went to see the operating surgeon to discuss the Twenty-Fifth Amendment and to discuss and explain our new dilemma, mindful that Section 3 makes it clear that it is the President himself who has to decide when he is able to discharge the duties of the office, even if the Amendment had not been the actual or, realistically, the sole basis for the temporary transfer. So our basic question to the doctor was, "How can we tell if he's really ready to do this? Not when he says he is, but how can we really tell?"

The doctor said, "Look, there's no formula. There's no set way to figure this out."

We discussed it at some length. We came up with the idea of inviting the President to read the letter to Congress informing them of his determination that he had the ability now to resume the powers and duties of the office, to see if he understood it. The doctor said that would be evidence that he was lucid enough, in fact, to resume the duties of the office.

About two and a half hours after surgery was completed and he was out of post-op, we went into his recovery room. We had light conversation with him about what was going on in the world He seemed lucid. He was picking up on some subtle points we were making in reference to one of his earlier movies. As I recall it was from a movie about George Gipp (the original "Gipper"), in which one of his lines as he was lying in the hospital was, "Where's the rest of me?" He picked up on all of it.

We then discussed transfer of power. I handed him the draft letter to read. He took the letter. As soon as he got it, he held it up and his eyes started twitching and rolling around and blinking. The Chief of Staff and I looked at each other and pretty much decided instantly that it was a little premature for us to discuss this with him. The President noticed our reaction, and he laughed and reminded us that he didn't have his glasses or his contacts on.

He said, "I just can't read the darn thing."

5. See U.S. CONST. amend. XXV.

Then he put his glasses on and he read the letter and we discussed it with him. But even then, we offered to come back in a couple hours and ask him to sign it. He said something to the effect of, "Oh, heck no. I don't want you to wake me up later. I want to sign it now."

So we concluded that he was lucid enough to take it back. He, in fact, signed it, and we transmitted it.

Mind you, there was no reason to rush the President at that point. Gorbachev had been in office for four months. There were generalized foreign policy flashpoints, but the Vice President was available and prepared for the transfer. There was no particular immediate reason to rush the President back into control, apart from the general perspective that, all things considered, the public should be assured of the President's condition as soon as it could be assured of the President's condition. On the other hand, you certainly would want to avoid having to reengage the office and then later having to transfer it back again. As I say, there was no reason at that point that we could see not to do it.

The other thing that I would discuss a little: some have questioned whether it was appropriate for us to have played this role with the President in resuming his powers, in light of the Amendment's language that made it *his own* conclusion that he was ready to resume his powers. In practice, I'm not sure how it could have operated any other way. To assume so is somewhat naïve. I have read some of the critics who have said that we just assumed the presidential powers ourselves. Whether they are doctors or nurses or the President's intimate advisers who come in to the situation, inevitably there are going to be people making objective determinations as to whether the President has seemingly sufficiently regained his consciousness and his wits about him, irrespective of his or her own conclusion. So the presidential declaration that he or she is fit, I suspect, will never, in any real sense, stand alone. Thus, the role of any presidential adviser, on this or other issues, is to evaluate the circumstances for the President and provide your judgment and your recommendation to the President. As it turns out, in this instance, when we offered him the alternative of additional time, the President was very convincing in saying no.

Certainly one can easily conceive of a scenario—and indeed the writers of the show 24 have done so very creatively—where the President's condition and his own assessment of his condition is uncertain and can be used as a tool for members of the Cabinet or the Vice President to manipulate tactical policy determinations. But in any event, thankfully, nothing of that sort was in the context of that day.

I'll grant you that if there had been any circumstance along those lines that have been depicted in 24 or any of these shows, where the President is in the hospital by virtue of an enemy attack or a pivotal threat is occurring to the nation at the time, we would not have been the only three people in that room. There would have been many, many more people contributing to those recommendations in Bethesda.

The first official and unambiguous invocation of Section 3 of the Amendment occurred in June of 2002. They did it without me! Actually, I joke, because they didn't—because Al[berto] Gonzales, who was Counsel to the President, called me. He wanted to know the history of what had taken place in the hospital room in Bethesda.

The second one was on July 21 of 2007. Both times the President decided to invoke the Amendment because he was undergoing a routine colonoscopy, where he would be temporarily and briefly transferring his powers to Vice President Cheney.

We were talking earlier about how things would go seamlessly. This was seamless. But let me just elaborate on this for a couple more minutes, just to give you a flavor for that President's thinking in this instance.

Now that the Twenty-Fifth Amendment had already been invoked, he wasn't breaking the ground. The decision was made to have the procedure in 2007, when I was there. There was no serious debate about whether it should be exercised or not, although President G.W. Bush and I did spend some time on that—he was very curious about the incident before with Ronald Reagan and why it had been handled the way it had been.

The procedure was done at Camp David. All the security and communication lines were all pre-set. Once the President was going under anesthesia, I called the Vice President. We then launched the letter that the President had signed right before he began the procedure. Once the operation was over, the Chief of Staff, the National Security Adviser, and I jokingly donned hospital whites and waited for his eyes to open. I will leave it to his memoirs to cite his humorous comments at the moment. Let's put it that way.

After a rest period, the President took a walk at Camp David. Then we all had breakfast, because he hadn't eaten since the day before. When he was finished, he asked for the papers to sign. He signed it and went off for a bike ride. It was quite a difference from the last time I had gotten such a Presidential signature.

What are the takeaways from this long stroll down memory lane?

First, the Twenty-Fifth Amendment, as written, doesn't provide for every succession contingency. Most of them relate one way or the other to the Vice President. We have had that discussion and will continue to have it, but I must tell you that your continuing efforts to identify these ambiguities and gaps in current constitutional and statutory provisions for continuity are tremendously important to the country.

Secondly, we have seen that there is a historic reluctance on the part of Presidents and Vice Presidents when dealing with the potential use of and their potential role under the Twenty-Fifth Amendment, because to exercise it might trigger signals of personal or national weakness or of personal ambition. Frankly, I'm not sure there's a textual remedy for that. I think we have to accept that this is human nature. We have yet to see how provisions—namely, Section 4—will operate in reality. Hopefully we will not have to see that, but we don't know what would happen there.

Third, it's important for us to engage in these discussions so that we do have recommendations that have been scholarly in their evaluation, in the calm of debate, not the turmoil of crisis. This is going to be helpful, should there be an opportunity to amend the existing constitutional amendment and the statutory regime. However, as a practical matter, we know from history that unless something catastrophic occurs that gives justification for it and people seize the moment, as Senator Bayh did—and I guess the moment of 9/11 was an interesting one, but it didn't affect the continuity of government at that moment, so it wasn't as much in the forefront—I think the likelihood is that what we posit here today is unlikely to be extended.

Finally and most importantly, these episodes that I have recounted today I hope will instruct us all that no matter how many contingencies are contemplated, you are never going to get them all. You are never going to think of everything that could or might happen, so we have to place a layer of trust in our elected leaders and their advisers, and frankly in individuals in the press as well, to mind that any procedural gaps in a continuity crisis will be dealt with integrity and with the nation's best interest at heart. Even if there might be an eventual constitutional remedy enacted to cure some of the defects that we're talking about today, we are unlikely still to capture them all. Even in the nation with the most able Constitution among all men, it will be no greater than the character and the wisdom of the people that enforce it and are empowered to do so. Thus, I would suggest that our major goal here today is to provide the guidance in any way, shape, and form that it may take.

I thank you all very, very much. It's an honor to be here.